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FIRST APPEAL NO. 6520 of 1995

Date of Decision : 8.3.1996

For Approval & Signature

THE HON'BLE MR. JUSTICE N.J.PANDYA

AND

THE HON'BLE MR. JUSTICE A.R. DAVE

1. Whether reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ?

5. Whether it is to be circulated to the Civil Judge ?

Mr. H.M. Bhagat, learned Advocate for the Petitioner

Mr. M.R. Bhatt , learned Advocate for the Respondent.

CORAM : N.J.PANDYA & A.R DAVE, JJ

8.3.1996

ORAL JUDGMENT : [Per : Pandya, J]

With the consent of the parties, the matter is taken up for final disposal.

Learned Advocate Mr. M.R.Bhatt appears for the original claimant- respondent no.1. Claim Petition No. 246/86 came to be

filed before the M.A.C.Tribunal, Ahmedabad (Rural) at Mirzapur and it came to be heard and decided by the learned M.A.C.Tribunal (Auxi) Ahmedabad (Rural) at Mirzapur by the judgment dated 29.4.1995. Against the claim of Rs. 5 Lakh, learned Judge granted claim of Rs. 2,66,784.00 with proportionate costs and interest at the rate of 12% p.a. from the date of petition till realisation.

Appellant is the Insurance Company- Opponent no.3 of the said petition. Along with it, the owner of the truck - original opponent no.4 has also joined in filing present appeal. Rest of the parties-opponents as well as original petitioners are joined as respondents.

It is essentially a contest between the appellant on one side and respondent no.1 on the other. In the Trial Court also, the case was fought by the Insurance Company only because respondent nos. 1, 2 & 4 had not cared to file the written statement.

The usual defence of the company was taken and the learned Judge, after recording evidence, came to the aforesaid conclusion and awarded Rs. 2,66,784.00.

The appeal is filed by the Insurance Company as well as the owner of the vehicle. Appellants can legitimately go into all the aspects of the case that were fought before the trial court. However, essentially the concentration is on the quantum to be awarded to the petitioner i.e. respondent no.1.

The grievance is mainly as to the future economic loss awarded by the learned trial Judge to the tune of Rs.2,21,184.00

It was the case of the petitioner before the trial court that at the time of incident, he was serving with the Bank where his monthly salary was Rs. 2175.00 and he had to remain away from his work for about 350 days. As he had availed of the leave to his credit, learned trial Judge awarded him under the heading of actual economic loss under the aforesaid heading for a period of 90 days only because for that period alone, the petitioner did not receive salary.

So far as the future economic loss is concerned, the appellants, as stated above, are pointing out that the petitioner being essentially the officer worker i.e. functionary in the Bank, the fracture that he had suffered on his right leg of tibia febula, even if it is compound fracture, would not bring about the decrease in his earning capacity atall. At the same time, in our opinion, the fact that bodily integrity of the man who is the victim of the tort has been shattered, cannot be over-looked.

The learned Tribunal had before it the evidence of disability of right lower limb on account of said injury i.e. permanent partial disablement capacity determined at 72%. In relation to the entire body, it is worked out to 1/4th namely 18% . The learned Judge unfortunately has taken 50% of disablement and has worked out compensation on that basis.

Had it been the case of merely a Bank worker, the position would have been different. It is now on record and established by production of revenue extracts i.e. village form 7/12 that the petitioner does have agricultural holding which he was looking after. As a result of the said injury, he is left with limping in his right leg and to that extent of course his ability to supervise agricultural operation is also impaired and has to be taken into consideration.

At the time of incident, his monthly salary was Rs.2175.00 as noted above. To this is added by the learned Judge the income of Rs. 1000.00 derived from agricultural income and that is how sum of Rs.3000.00 is taken to be the base figure. 20% thereof will workout at Rs. 600.00. 1/4th in relation to the entire body comes to 18% as recorded above and for easy calculation purpose as well as making provision for future also, it is rounded off to 20%.

Accordingly, the said figure of Rs. 3000.00 is taken base, it will work out to Rs. 600.00 and the actual figure will be Rs. 7200.00. At the time of incident, the petitioner was aged about 35 years and, therefore, multiplier of 15 would be just and proper and accordingly, it works out to Rs. 1,08,000.00.

In our opinion, therefore, as against the amount of Rs. 2,21,184.00 awarded by the Trial Court towards future economic loss, this should be the amount to be awarded to the claimant and therefore we hold accordingly.

However, within the limits of amount awarded by the trial court and certainly within the limits of amount claimed by the petitioner in his petition, if there is a room of increase inspite of appeal having been filed by the Insurance Company and owner of the vehicle, the petitioner while supporting the judgment can certainly point out the error and within the limits of the amount claimed, can certainly request the court for revision, if necessary, under different headings. Exactly, this was the submission made by the learned Advocate Shri Bhatt for the respondent- claimant. We agree with him and accept the same.

This will have the direct bearing so far as actual economic loss is concerned. The petitioner on the aforesaid basis had to exhaust his leave which was to his credit in the Bank service and had to for a period of about 90 days without any

salary whatsoever. The said period being of about 350 days, we round it off to period of one year and we hold that he is entitled to actual economic loss for entire period.

He being the agriculturist, for that period of one year, he could not have attended the agricultural operation. This certainly gives room for increase and that has not been taken into consideration. On the aforesaid basis if monthly income of Rs. 1000/ is added as done by the learned trial Judge, the total amount would come to Rs. 3175.00 and if accordingly for the entire period of one year towards actual economic loss awarded to the petitioner, it will come to Rs. 38100.00. From this, sum of Rs. 9600.00 will have to be deducted and that has already been awarded by the trial court. The total sum under that heading that could be awarded comes to Rs. 28,500.00.

The amount awarded by the trial court under different headings, keeping them as they are, the final rendering comes to Rs. 1,08,00.00 towards future economic loss, Rs. 28,500.00 towards actual economic loss and the remaining amount awarded by the Trial Court keeping it as it is, would come to Rs. 1,81,500.00. To that extent, appeal is allowed. Rest of the award of the trial Court is set aside.

Appeal stands accordingly allowed partially. The Award passed by the Tribunal as to the payment of interest and costs remains as it is.

The appellants are directed to deposit the amount within the period of six weeks from today. On the amount so deposited after deducting required court-fees amount as directed by the Trial Court, the balance amount shall be dealt with as under :-

25% of the amount shall be paid by A/c Payee Cheque to the petitioner-claimant. Rest of the amount i.e. 75% amount is ordered to be invested in equal proportion in two different schemes namely National Saving Certificate and Unit Trust of India. Scheme to be selected by the claimant which might, in his opinion, be most beneficial for his purpose. Sum of Rs.25,000.00 which is lying with the Registry of this Court, is ordered to be transferred to the Trial Court.

Appeal stands partially allowed accordingly.